

1 payment terms, it is receiving preferential, and thus discriminatory, treatment to the extent that
2 such terms and conditions are not extended to other companies. Further, failure to post in a
3 timely manner and accrue specific transactions casts doubt on the validity of the internal
4 accounting system and the reporting results generated from such a system and hinders a proper
5 examination of actual activity by interested parties and the FCC's investigation into compliance
6 with its accounting procedures.

7 79. Specific examples of failure to accrue and untimely accounting, found during my
8 follow-up review and testing, include:

- 9 a. One of my selections was **[PUBLIC DOCUMENT – TRADE SECRET**
10 **DATA HAS BEEN EXCISED]**
11 These amounts should have been accrued at year-end 1999 and
12 such payment is not timely.
- 13 b. More egregious were two invoices I pulled and inspected
14 corresponding to **[PUBLIC DOCUMENT – TRADE SECRET DATA**
15 **HAS BEEN EXCISED]**
16 These amounts should have been accrued at year-end and payment
17 is not timely.
- 18 c. Corresponding to posted work order MMLD039, I pulled and inspected
19 **[PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN**
20 **EXCISED]**
21 Again, accounting is not being accomplished in a timely manner.
22 The accounting also violates section 5 of the web-posted work
23 order that mandates billing "on a minimum of a quarterly basis."
24 Finally, as will be discussed in more detail in the section below
25 discussing past history, in February 2001, the FCC found this
26 calling card program to be a provision of in-region, interLATA
27 service and to be a violation of Section 271.⁸³ Thus, Qwest LD
28 was directly involved in the provision of in-region long-distance
29 service prior to Section 271 approval. The FCC looks to past and
30 present behavior as the best predictive indicator of future
31 compliance with Section 272.

⁸³ *AT&T Corp. v. U S WEST Communications, Inc.*, File No. E-97-28, DA01-418, Memorandum Opinion and Order (Rel. Feb. 16, 2001).

1 80. I was unable to trace one of the invoices, corresponding to a selected tag number,
2 into the web-posted work orders. For example, on **[PUBLIC DOCUMENT – TRADE**
3 **SECRET DATA HAS BEEN EXCISED]**. This transaction purported to correlate to the work
4 order for Card services. I traced to that posted work order, numbered MMLD039, and I could
5 not see where that work order covers this transaction. This casts doubt on the validity of Qwest's
6 chosen method to post blanket work orders and service agreements to represent its actual specific
7 transactions and underscores the need and importance for Qwest and QCC to post the specific
8 transactions to the website.

9 81. One of the billable amounts I selected off a summary sheet was in the amount of
10 **[PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED]**. The question
11 arises as to the independence of these employees and whether safeguards are sufficient to
12 prohibit information flows between Qwest and QCC. Pursuant to Section 272(b)(3), QCC and
13 Qwest are required to have separate employees. It is AT&T's position that where a Qwest
14 employee is dedicated to QCC, that employee is not a separate employee. This also
15 demonstrates why simply checking payroll lists is inadequate.

16 82. The FCC rules require that a statement be available certifying that an officer of
17 the BOC has examined postings to the website and such are true and accurate. I examined
18 certification statements for QCC and Qwest, on file at Qwest, and noted that Robin Szeliga, a
19 Senior Vice President of Qwest, signed both on March 20, 2001. As the certification requires a
20 signature by a Qwest officer, presumably Ms. Szeliga is an officer of Qwest. However, when I
21 compared that name to a listing of QCC's and Qwest's Officers and Directors in the testimony of
22 Ms. Brunsting,⁸⁴ Ms. Szeliga was listed as Executive Vice President, Chief Financial Officer and
23 a Director of QCC. In addition, to a violation of the separation requirements of Section

1 272(b)(3), this raises a doubt as to whether Qwest and QCC have a valid certification statement
2 on file and whether Ms. Szeliga had personal knowledge of what she was certifying.

3 **d. Follow-Up Review and Testing on the 272 Affiliates' Revenues for**
4 **Services Provided by the Affiliates to Qwest**

5 83. It should initially be noted that the FCC makes no distinction in its disclosure
6 rules between a Section 272 affiliate's expenses versus its revenues. The rule applies to
7 "transactions." Thus, a review and testing of the Section 272 affiliates' revenue side is
8 appropriate and necessary.⁸⁵

9 84. For the April 2001 follow-up review of the Section 272 affiliates' revenues
10 (payments from Qwest to the Section 272 affiliates for services provided by the affiliates), I first
11 revisited the review and testing done on my initial on-site review in August 2000. At that time,
12 no information was made available to review payments from Qwest to Qwest LD for services
13 provided by Qwest LD.

14 **e. Procedures to Follow-Up Testing for Revenues of Qwest LD and**
15 **QCC**

16 85. For my follow-up testing on revenues, I received and reviewed billing detail of
17 payments made by Qwest to Qwest LD (revenues of Qwest LD) for the years 1999 and 2000.

18 86. As was previously noted, I did not receive any detail of payments made by Qwest
19 to QCC (revenues of QCC) for services provided by QCC for the year 2001 in the QCC binder
20 that was given to me. Nor did I receive any QCC financial statements.

21 87. I reviewed the Service Agreements (SA) and related "task orders" (which
22 signifies services provided by the Section 272 affiliate to Qwest) for both Qwest LD and QCC.

⁸⁴ Brunsting Affidavit, Exhibits. JLB-272.7 & 272.8.

⁸⁵ Indeed, one of the reasons that the FCC applies its affiliate transaction rules to transactions between BOCs and Section 272 affiliates was to detect and protect against the flow of subsidies. *See Accounting Safeguards Order*,

f. Results of Follow-Up Review and Testing for Revenues of Qwest LD and QCC

88. Following are specific problems and items of interest discovered during my follow-up review and testing of Qwest LD's and QCC's revenues.

- a. Due to the lack of billing detail or financial statements, I cannot determine if QCC received any payments from Qwest for 2001. At a minimum, lack of an audit trail hinders the ability of Qwest and QCC to comply with the public disclosure rules of Section 272(b)(5) and the failure to post a sufficiently detailed description impairs the FCC's ability to evaluate compliance with the FCC's accounting safeguards which, in part, are designed to detect and protect against the flow of improper subsidies. During my supplemental testing, I was able to review such detail and the results of that review are discussed below.
- b. On QCC's website, under "Services Agreement", or SA, there are listed 3 Task Orders. Task Order #2, which provides for the leasing of transport capacity on QCC's fiber optic network, estimates annual revenues of \$464,484 to QCC for the leasing of transport capacity at \$38,707 per month. As billing is suppose to occur on a monthly basis, my failure to see any revenue billing detail may mean that Qwest is receiving preferential billing treatment (extended payment terms beyond the posted terms and conditions) and/or the internal accounting system is faulty.
- c. Also under QCC's SA, per Task Order # 1, Qwest has contracted for QCC to provide financial services, which include "financial analysis, financial advice, budgeting, accounting, and payroll support" in the amount of \$400,000 per year. The PUC should question the rationale behind this task order, or the logic as to why Qwest would find it necessary to contract with its Section 272 affiliate for such financial services. The inquiry into the rationale is magnified where QCC has contracted (see QCC's Work Order - Finance Services on the website) with Qwest to be provided for almost the same services. Such circular servicing may be a vehicle to provide reinvesting to QCC and subsidize future losses on its long-distance offerings. It must be further noted that QCC states that its "accounting and finance functions are performed on behalf of the 272 affiliate by the Services Company."⁸⁶ Thus why would a task order be necessary for the provision of financial services by QCC? There is much inconsistency on the provision and receiving of financial services which assumedly include payroll services. The PUC should inquire and determine if safeguards are being circumvented.

[¶] 176.

⁸⁶ Brunsting Affidavit at 12.

1 d. On Qwest LD's website is listed Task Order # 9901 for card services
2 pertaining to the 1-800-4USWEST Calling Card products and Qwest LD's
3 provision of network design, development and maintenance, product
4 design and management and product and market development. As was
5 discussed above, the FCC found this calling card scheme to be an illegal
6 venture into in-region, interLATA long distance. Thus, any revenues
7 received by Qwest LD, and now QCC with the imminent merger, under
8 this scheme were ill-gotten.

9 e. I reviewed accounting detail supporting Qwest LD revenues. For the first six
10 months of 2000, most of the revenue came from **[PUBLIC DOCUMENT – TRADE SECRET**
11 **DATA HAS BEEN EXCISED]** No explanation was provided in the detail as to this dramatic
12 change. Due to the FCC's concern as to the detection and protection against flows of subsidies,
13 the PUC should inquire of Qwest about this revenue stream, what it consists of, where it went to
14 and whether QCC is now the recipient of it.

15 h. I was unable to determine, from the detail provided, the reason for a billable
16 amount/accounting entry in June 2000. **[PUBLIC DOCUMENT – TRADE SECRET DATA**
17 **HAS BEEN EXCISED]**. Due to the FCC's concern as to the detection and protection against
18 flows of subsidies, the PUC is urged to inquire of Qwest about this revenue amount.

19 **3. Supplemental Review of QCC's Affiliated Transactions with Qwest**
20 **Corporation**

21 **a. Background for the Supplemental On-Site Review and Testing**

22 89. Previously, I stated that I did not receive certain accounting detail of the specific
23 transactions between QCC and Qwest which included detail of payments made by QCC to Qwest
24 (expenses of QCC), detail of payments made by Qwest to QCC (revenues of QCC) and financial
25 statements for QCC for any period. Due to the failure to receive such detail, I concluded above
26 that testing of QCC's expenses and revenues with Qwest were compromised and no conclusions
27 could be reached regarding specific transactions.

1 90. AT&T made a request of Qwest on April 30, 2001, for the needed accounting
2 detail. Qwest agreed to make such detail available starting on May 8, 2001.

3 **b. Detail Provided and Procedures Used for Supplemental On-Site**
4 **Review and Testing**

5 **(i) For QCC's Expenses**

6 91. For QCC's expenses (for services provided *by* Qwest), Qwest made available to
7 me a "Summary of QCC Billing in April 2001 [and] Monthly Reconciliation to Section 272
8 Website" which contained [**PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN**
9 **EXCISED**]. Also provided were copies of the invoices and supporting details, including the
10 related posted work order and relevant amendments.

11 92. What was not provided were QCC's "Authorization for Payments" for these
12 invoices as they will not be made available until May 22, 2001. All of the tendered invoices
13 from QC to QCC were dated sometime in the latter half of April 2001. This means that they will
14 not be paid until sometime in the latter half of May 2001, or later. These [**PUBLIC**
15 **DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED**] invoices represent
16 services provided by QC to QCC for the period July 2000 through April 2001, generally. The
17 impact of this will be further developed below.

18 Also, QCC's financial statements were not provided. Qwest personnel informed me that
19 these financial statements would not be made available until early May, which I found of
20 concern given that QCC's statements are consolidated with Qwest Communications
21 International, Inc.'s ("QCI"), and the latter's statements were made public for the first quarter
22 ended March 31, 2001. On June 5, 2001, I traveled to Qwest and was presented with a single
23 piece of paper representing QCC's financial statements which was entitled [**PUBLIC**
24 **DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED**]

1 Qwest personnel did not present the income statement to me and stated that the balance sheet
2 was all that was available to me. I was given no explanation as to why QCC's income statement
3 or cash flow statement was not presented. The balance sheet was insufficiently detailed to allow
4 me to trace any revenue or expense amounts associated with Qwest Corporation for the purpose
5 of comparing such with other filed reports such as the ARMIS report. Either by design or not,
6 there were no descriptions in this consolidated balance sheet for affiliated receivables or
7 payables with Qwest. Whether such affiliated amounts were included in the general receivable
8 and payable amounts is unknown. In summary, this insufficiently detailed consolidated balance
9 sheet provided no documentation to clear up the apparent underreporting or lack of reporting of
10 affiliated transactions as between Qwest and QCC.

11 93. To test QCC's expenses from the accounting detail, I selected [PUBLIC
12 DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED] invoices from the
13 summary sheets and traced to a copy of the invoice and supporting documentation. From the
14 invoice, I traced to the applicable web-posted work order and amendments, if any.

15 (ii) For QCC's Revenues

16 94. For QCC's revenues (for services provided *for* Qwest), Qwest made available to
17 me a "Summary of QC Billing in April 2001 [and] Monthly Reconciliation to Section 272
18 Website" which contained [PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN
19 EXCISED] Also provided were copies of something called "affiliate billing forms" with "ASF"
20 numbers and corresponding detail, including the related posted task order and relevant
21 amendments. The billing forms, assumedly, are what QCC uses to invoice QC for services
22 provided.

23 95. To test QCC's revenues from the accounting detail, I selected all [PUBLIC
24 DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED] and traced to a copy of the

1 “affiliate billing form” and supporting documentation. From the billing form, I traced to the
2 applicable web-posted task order and amendments, if any.

3 c. **Results of Supplemental On-Site Testing and Impact on Section**
4 **272(b)(5)**

5 96. Findings from the supplemental on-site testing impact and supplemental data
6 requests upon Qwest’s and QCC’s compliance with subsection 272(b)(5) will be discussed
7 immediately below and the impact upon other sections will be discussed elsewhere in this
8 testimony. This data demonstrates that Qwest’s past behavior indicates that Qwest’s assurances
9 of future compliance with Section 272 are unsupported “paper promises” and that the
10 Commission should expect that Qwest will not carry out its obligations under Section 272.

11 (i) **General Discussion of Supplemental On-Site Review**

12 97. I discovered that, alarmingly, QCC and Qwest had not billed *any* of their
13 affiliated transactions for the period July 2000 to present *until April 2001*.⁸⁷ Qwest admitted this
14 in the documentation provided to me. On the summary sheets were notes that stated **[PUBLIC**
15 **DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED]** The implications of this
16 on Qwest’s compliance with Section 272(c)(2) and other 272 sections are discussed elsewhere in
17 this testimony. It is disconcerting that there would be such a total failure by Qwest to account
18 for affiliated transactions with QCC given that it made the decision as early as the second week
19 of September, 2000 to use another entity as its Section 272 affiliate and purportedly began the
20 transition process in early October, 2000. Equally disturbing are the statements made by Ms.
21 Brunsting and Ms. Schwartz, in their respective affidavits, asserting compliance with the posting
22 requirements despite Qwest’s admission as noted above.

⁸⁷ This may explain why billable detail of accounting transactions was not made available to me for my previous on-site testing; *i.e.*, there was nothing available for my review. It further may explain the failure of Qwest to tender any 2001 financial statements for QCC when initially requested.

1 98. Qwest asserts that payments to and from QCC “are tracked and reconciled to
2 ensure compliance with the requirements of Section 272(b) [and] the processes for capturing
3 transactions between Qwest Corp. and the 272 affiliate are the same as for all affiliates.”⁸⁸ If the
4 reconciliation procedures that are *actually carried out* extend to all affiliated transactions, then
5 the problem of failing to accrue and timely account for transactions is much more widespread
6 than just as to Section 272 affiliated transactions.

7 99. To comply with Section 272(b)(5), QCC must provide detailed written
8 descriptions of transactions with Qwest, and the rates, terms and conditions must be posted on
9 the website within 10 days of the transaction. Further, the written description must be
10 sufficiently detailed to allow the FCC to determine compliance with its accounting rules.

11 **(iii) Results of Supplemental Testing of Expenses of QCC**

12 100. As was noted above in my affidavit discussing the results of the first two phases
13 of on-site reviews, there continues to be long periods of time before a specific or “billable”
14 transaction is billed, and consequently paid by QCC. Also, the unstated accounting policy
15 continues (from Qwest LD and now to QCC) that there are no year-end, and certainly no month-
16 end, accruals of expenses. This is because billable amounts are being expensed as invoiced. The
17 importance of this is that when QCC receives very generous extended payment terms, it is
18 receiving preferential, and thus discriminatory, treatment to the extent that such terms and
19 conditions are not extended to other companies. Because specific billable transactions are not
20 posted to the website, a third party would be unable to view *actual* terms and conditions and
21 make a decision based upon what is *actually* occurring.

⁸⁸ Qwest Response to AT&T Multistate Data Request 104.

101. Qwest asserts that it is well aware that nondiscrimination requirements extend to any good, service, facility or information that it provides to QCC.⁸⁹ However, this is a “mere paper promise.” What is actually occurring are such discriminatory practices as the extension of very favorable payment terms and the failure to post work orders within a 10-day period.

102. The failure to account in a timely manner and accrue specific transactions casts doubt on the validity of the internal accounting system and the reporting results generated from such a system. This, in turn, hinders a proper examination of actual activity by interested parties and the FCC’s investigation into compliance with its accounting procedures.

103. QC states that there are no discrepancies between actual billing and Internet postings since April.⁹⁰ What QC does not admit is that for the months of January and February the error rate was 100% as no transactions were posted.

104. As a result of my supplemental on-site review, additional examples of failure to accrue and untimely accounting include:

- a. Of the 18 invoices selected for testing, 12 invoices wholly or partially were for services provided in 2000 (often starting in July 2000). None of these invoices were billed until the latter half of April 2001. Thus, no year-end accruals were made by QCC for these 12 invoices selected which represent \$12.1 million of services provided.
- b. None of the 18 selected invoices were billed until the latter half of April 2001. None were accounted for in a timely fashion.
- c. One of my selections was **[PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED]**
- c. At a minimum, these amounts should have been accrued at year-end 2000 and the payment is not timely. Another selection was **[PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED]**

⁸⁹ *Id.* at 111.

⁹⁰ Schwartz Affidavit at 24; Exhibit MES-272.11.

1 d. Once again, part of this amount should have been accrued at year-
2 end, billing is not timely, QCC is receiving discriminatory
3 extended payment terms and the associated task order was not
4 timely posted.

5 e. The admission made by Qwest and QCC, as noted in the
6 accounting detail, that **[PUBLIC DOCUMENT – TRADE**
7 **SECRET DATA HAS BEEN EXCISED]** does not adequately
8 explain why transactions for the July – December 2000 time period
9 were not billed, accrued and reconciled. Note that QCC was
10 officially designated the 272 affiliate in January 2001 and such a
11 change was contemplated at least since September 2000.

12 f. Qwest's failure to bill QCC in a timely manner violates the web-
13 posted Master Services Agreement (MSA) which states that
14 "Qwest Corp. shall submit invoices to QCC for Services ... on a
15 monthly basis unless otherwise specified in the Work Order."⁹¹
16 The failure to adhere to its internal procedures is further evidence
17 that Qwest's actions "speak louder" than its paper promises.

18 105. Qwest and QCC assert that they consistently post and make public all transactions
19 between Qwest and Qwest LD, and now Qwest and QCC, to its web site to satisfy the FCC's
20 public disclosure requirements.⁹² This claim is demonstrably false. Not one work order (for
21 services provided by QC for QCC) was posted to the Internet website prior to March 27, 2001.⁹³
22 That means that all 18 invoices that I reviewed (which represented activity well before March 27,
23 2001) were not posted within the 10 days in which the FCC requires Qwest to post detailed
24 written descriptions of transactions. As most of the invoices reflect activity extending back to
25 July 2000, the 10 day requirement could have been a 10 week requirement and Qwest still would
26 not have complied with it. This is a gross violation of the *Accounting Safeguards Order* that
27 requires posting of the terms, conditions and actual rates paid in each transaction to the Internet
28 within 10 days. The Internet posting requirement is continuous, not occasional. The practical
29 importance of posting in a timely manner is to provide information to competitors on goods,

⁹¹ See Section 272 website at http://www.qwest.com/about/policy/docs/qcc/MSA_qcc.html.

⁹² See generally, Brunsting Affidavit at 19 - 21.

1 services, facilities or information that Qwest is providing to QCC. By shielding this information
2 until the end of March, 2001 Qwest discriminates in favor of QCC.

3 (iv) Results of Supplemental Testing of Revenues of QCC

4 106. I tested all [PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN
5 EXCISED] of the “invoices” (a/k/a “affiliate billing forms”) presented to me that represent
6 billings from QCC to QC for services provided by QCC and cover a period commencing in July
7 2000 and running into March 2001.

8 107. The same problems that I discovered in my review of QCC’s expenses were
9 evident with its revenues: lack of accrual accounting, untimely accounting and improper posting
10 for all [PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED]
11 of the invoices representing over \$5 million of transactions. Further, at least 7 of the [PUBLIC
12 DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED] invoices highlight the
13 widespread and troubling practice of the liberal “sharing” of employees between the two entities
14 that impacts upon Section 272(b)(3). As was discussed in that section, this practice of Qwest’s
15 sharing employees casts doubt upon the actual independence from QCC.

16 108. Another issue that arose during my supplemental testing was whether Qwest is
17 discriminating in the provision of services, goods, facilities or information on a *de facto* basis
18 where it sets exorbitantly high rates for services. Although, Qwest may be following the FCC’s
19 guidelines on pricing affiliated services, there are many examples of very high hourly billable
20 rates for services (see specific examples below). By setting such high rates, competitors may be
21 functionally excluded from utilizing these services and discrimination “in substance” is achieved.

⁹³ The web-posted date of 2005 must be in error. See Section 272 Internet site Posting Summary at <http://www.qwest.com/about/policy/docs/qcc/postSummary.html>.

1 The corollary concern to setting high rates for services is that it may be a mechanism for Qwest
2 to flow subsidies back to QCC.

3 109. Following are specific problems and items of interest discovered during my
4 supplemental review of QCC's revenues.

- 5 a. Several of the billable amounts raise the question of whether Qwest is
6 flowing improper subsidy amounts to QCC. For example [**PUBLIC**
7 **DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED**]
8 This raises questions as to improper subsidy flow via high bill
9 rates. A corollary is that by setting such high bill rates, Qwest may
10 effectively prevent competitors from using such services and thus
11 *de facto* discrimination is achieved.
- 12 b. Another example of high billing rates for “borrowed” or “shared”
13 employees was [**PUBLIC DOCUMENT – TRADE SECRET DATA**
14 **HAS BEEN EXCISED**]. Once again, the question is raised whether the
15 high billing rates of such personnel are designed to flow subsidies back to
16 QCC and whether such high rates is *de facto* discrimination. Further, the
17 work order associated with this activity was not posted until March 29,
18 2001, and did not contain any rates or an estimated total amount. Such is
19 a violation of the FCC's 10 day posting requirement.
- 20 c. Review of QCC's web “Posting Summary”⁹⁴ reveals that no Task Orders
21 (once again, a task order is for services provided from QCC to Qwest)
22 were posted before March 27, 2001. Also, no Task Order was signed prior
23 to March 27, 2001, except for the Task Order for leasing of fiber optic
24 lines.⁹⁵ As all [**PUBLIC DOCUMENT – TRADE SECRET DATA**
25 **HAS BEEN EXCISED**] of the invoices that I examined for QCC's
26 Section 272 affiliated revenues pertained to services provided for a period
27 generally starting in July or August 2000, there is a gross violation of the
28 10 day requirement to post to the Internet site.
- 29 d. QCC violates the Service Agreement purportedly signed on either January
30 19, 2001, per the document, or March 23, 2005 [sic], per the posting
31 summary and posted to the website. The Service Agreement states that
32 “QCC shall submit invoices to Qwest Corp. for Services provided in
33 accordance with the terms and conditions of this [Service Agreement]
34
35

⁹⁴ Once again, the years used are 2005, 2006, etc. and appear to be incorrect. See
<http://www.qwest.com/about/policy/docs/qcc/postSummary.html>.

⁹⁵ As the task order of “Lease of Fiber Optic Lines” was signed on February 27, 2005 [sic], and not posted until
March 27, 2005 [sic], there is a violation of the 10 day posting requirement. Also, an earlier review (on April 29,
2001) of the web Posting Summary had this task order being signed on February 26, 2001, and posted on March 26,
2001. There is no explanation for this change, but it raises the point of accountability of web postings and how
Qwest can manipulate posting dates and other data to fit the FCC's requirements without oversight.

1 Agreement on a monthly basis unless otherwise specified in the
 2 Task Order.” None of the invoices that I reviewed followed the
 3 monthly procedure. Qwest and QCC are flouting their posted
 4 agreements and certainly are not adhering to the FCC’s
 5 requirements as to terms and conditions.

6 e. **[PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN**
 7 **EXCISED]** My review of that posted Task Order reveals that such lease
 8 does not provide Qwest with any ownership interest of QCC’s network,
 9 that the primary account that Qwest should expense these amounts to is
 10 Account # 6232 and that the Task Order was signed by Qwest on February
 11 21, 2001. The posting summary states that this Task Order was not posted
 12 until either March 26, 2001, or March 27, 2005 [sic], thus there is a
 13 violation of the posting requirement. **[PUBLIC DOCUMENT – TRADE**
 14 **SECRET DATA HAS BEEN EXCISED]**. Beyond the posting
 15 requirement violations, there is a concern that a transfer of ownership in
 16 network assets may be occurring given the description and the untraceable
 17 account code used. Simply because the task order states that there is no
 18 ownership transfer is of dubious value given the actual description used on
 19 the accounting detail.

20
 21 f. **[PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN**
 22 **EXCISED]** This task order was not posted until March 28 or 29, 2001.
 23 That means that Qwest utilized QCC’s equipment starting back in July 1,
 24 2000, and the related task order was not posted until almost 9 months
 25 later. Thus, competitors would have looked in vain on the Internet site for
 26 this type of service. This is a discriminatory practice by Qwest and a
 27 serious violation of Section 272(b)(5).
 28

29 **4. QCC’s so-called “transition phase”.**

30 110. At a Section 272 workshop held in Denver, Colorado on June 7-8, 2001, in the
 31 Multistate Section 271 proceeding, Qwest’s attorney stated that QCC did not officially become
 32 the section 272 affiliate until March 26, 2001 and therefore, QCC’s section 272 obligations did
 33 not commence until that date. This revelation came as a surprise to me. Based on Qwest’s and
 34 QCC’s testimony (filed in the multistate proceeding), statements on their Section 272 website, I
 35 believed (and still believe despite Qwest’s recent revelation) that QCC became the primary
 36 operational Section 272 affiliate sometime in January, 2001.⁹⁶ Following is a partial listing of

⁹⁶ Qwest has chosen to remove the language to this effect from its current website.

evidence pointing to QCC becoming a Section 272 affiliate sometime prior to, or in January 2001, and upon which I reasonably relied upon:

- a. "While QCC ("272 Affiliate") was not designated a Section 272 affiliate until January 2001, the BOC has identified and posted any transactions identified with QCC ("272 Affiliate") back to the Qwest-US WEST merger date on June 30, 2000."⁹⁷
- b. "In January 2001, QCC was identified as the 272 subsidiary of the future."⁹⁸ It is noted that in testimony filed previously in other venues, Ms. Brunsting simply states "to offer interLATA telecommunications service", but has added the phrase "of the future" in her Minnesota testimony.
- c. The Master Services Agreement (the "MSA") between Qwest and QCC is dated January 1, 2001, and per Article 2 of the agreement the effective date was January 19, 2001.⁹⁹ As it is Qwest's position that the MSA is a "transaction", it should have been posted to the website within 10 days. This is a violation of the posting rule.
- d. On QCC's Section 272 website *was* the following note: "To view transactions between Qwest Corporation and Qwest Long Distance prior to January 2001, please click here: <http://www.qwest.com/about/policy/docs/qcc.html>."¹⁰⁰ This language has now been changed, but the quote is in the original.
- e. On Qwest Long Distance's Section 272 website *was* the following note: "To view transactions between Qwest Corporation and Qwest Communications Corporation beginning in January 2001, please click here: http://www.qwest.com/about/policy/docs/long_distance/overview.html."¹⁰¹ Once again, Qwest has deleted this quoted language. The obvious inference of the two complimentary statements is that QCC, beginning in January 2001, became the operational Section 272 affiliate.
- f. Also on Qwest LD's Section 272 website *was* the following note: "Qwest Long Distance was the Section 272 affiliate of Qwest Corporation from

⁹⁷ Schwartz Affidavit at 23. The quote is from Ms. Schwartz's testimony filed in previous state proceedings. She has now added the qualifying phrases "of the future" and "did not become operational until March 26, 2001" to her original written testimony. AT&T's attorneys are reviewing whether QCC should be considered a Section 272 affiliate since the date of the merger.

⁹⁸ Brunsting Affidavit at 7.

⁹⁹ Schwartz Affidavit, Exhibit 272.7, p.3.

¹⁰⁰ QCC's Section 272 website at: <http://www.qwest.com/about/policy/docs/qcc/overview.html>.

¹⁰¹ Qwest LD's Section 272 website at: http://www.qwest.com/about/policy/docs/long_distance.html.

February 8, 1996 through December 31, 2000.”¹⁰² This language has now been removed.

g. Conversely, on QCC’s Section 272 website was the following note: “*Qwest Communications Corporation is its [Qwest’s] Section 272 affiliate as of January 2001.* This web site includes the transactions between Qwest Corporation and Qwest Communications Corporation. Prior to January 2001, Qwest Long Distance operated as the Section 272 affiliate.” (emphasis added) Qwest has removed this language from its current website.

h. During my on-site reviews, I was not given any accounting detail of billable transactions for Qwest LD after the January 1, 2001 date. The inference from Qwest’s actions was that Qwest LD, after January 1, 2001, was not the operational Section 272 affiliate.

111. Another reason that I was surprised at Qwest’s pronouncement that QCC did not become the operational Section 272 affiliate until the latter part of March 2001 is the recent timeline of events. Qwest states that it reevaluated the entity to serve as its Section 272 affiliate as early as August 2000.¹⁰³ Accordingly, Qwest notified several state commissions requesting a delay in Section 272 workshops on the eve of the filing of its response to AT&T’s testimony.

112. On September 15, 2000, an e-mail was sent by Qwest attorney Andrew Crain to the “Section 271 superlist” in the Multistate proceedings that stated that “*Qwest is in the process of developing a transition plan* for another subsidiary to become Section 272 compliant. As a result, Qwest recommends that the Section 272 topic be addressed in the second workshop, rather than the first.”¹⁰⁴ (emphasis added) Thus, since at least the middle of September 2000, Qwest had commenced the transition to QCC, and was not merely in a reevaluation process.

113. Putting the timing aspects of section 272 requirements aside, the PUC should not lose sight of the fact that QCC still had an obligation to follow FCC rules and state regulations

¹⁰² *Id.*

¹⁰³ Schwartz Affidavit at 6.

¹⁰⁴ On September 15, 2000, the second workshop in the Multistate proceeding was scheduled to start on January 16, 2001.

governing affiliate transactions during the so-called transition phase. As the Washington ALJ stated:

It appears that Qwest did not follow FCC rules or Commission regulations governing affiliate transactions with respect to these services. (footnote omitted) Whether or not QCC was a section 272 affiliate should not affect Qwest's duty to abide by the affiliate transaction rules that were in effect while the transactions were taking place.¹⁰⁵

5. What is a "transaction"?

114. A transaction is an event that captures a discrete accounting activity. Based on observations while conducting my testing, Qwest LD, and now QCC track billable activities which, in turn, can be traced to invoices. Either the billable activity or the invoice, if it only contains one activity, should be the transaction and should be publicly reported and disclosed. This type of specific transaction posting would allow determinations to be made of errors and departures from GAAP and contravention of FCC safeguards, such as whether specific transactions are occurring in a discriminatory fashion. Qwest, however, fails or refuses to post actual transactional details and thus does not comply with Section 272(b)(5).

115. Qwest has adopted the approach of the former U S WEST in choosing to report documents it collectively calls "agreements" rather than individual transactions. This approach does not rise to a summary of the transaction, let alone a detailed description that would permit the FCC to determine if such transactions are nondiscriminatory.¹⁰⁶

¹⁰⁵ WA ALJ's 272 Order, p. 114.

¹⁰⁶ The FCC has held that "our interpretation of Section 272 (c)(1) as a flat prohibition against discrimination will work in conjunction with the Section 272(b)(5) disclosure requirement to deter anticompetitive behavior." *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order, FCC 96-489 (Rel. Dec. 24, 1996), ¶ 324 ("Non-

1 116. Qwest claims to be adequately disclosing its affiliated transactions but fails to
2 mention the purposes behind the public inspection requirement of Section 272(b)(5). These
3 purposes are twofold: to assist the FCC in determining that such transactions are conducted in
4 compliance with FCC accounting safeguards, and to make sure information of such services are
5 available to unaffiliated third parties.¹⁰⁷ The FCC would be unable to determine compliance
6 with their accounting rules if specifically accounted for transactions are not posted. Also, third
7 parties could not avail themselves of services or goods if Qwest does not post them in a timely
8 manner.

9 117. Full disclosure must include a description of the rates, terms, and conditions of all
10 transactions, as well as the frequency of recurring transactions and the approximate date of
11 completed transactions.¹⁰⁸ It is not sufficient to post an agreement with the terms and
12 conditions on the website and leave it at that. Qwest has attempted to comply with the 10-day
13 posting requirement on the separate affiliate website by posting master agreements within 10
14 days of their execution and individual transactions, referred to Qwest as "back-up detail"¹⁰⁹ can
15 only be viewed upon special request.

16 118. The Washington ALJ shared AT&T's concerns for the adequacy of Qwest's
17 Internet postings: "Qwest must expand the descriptions of services rendered in its agreements
18 to ensure that its website adequately describes the scope and type of services provided under the
19 agreements."¹¹⁰ AT&T urges the Minnesota PUC to adopt the same requirement.

20

Accounting Safeguards Order").

¹⁰⁷ See, *BellSouth Louisiana II Order*, ¶ 335.

¹⁰⁸ *Id.* at ¶ 337. The FCC found that BellSouth failed to comply with its obligations where it disclosed only basic contractual terms of its agreements while withholding the actual transactional details.

¹⁰⁹ Schwartz Affidavit at 22.

¹¹⁰ *WA ALJ's 272 Order*, p. 116.

1 **E. Section 272(b)(5) – “Arm’s Length” Requirement**

2 119. The second requirement of Section 272(b)(5) is that all transactions between
3 Qwest and Qwest LD, and Qwest and QCC, must be negotiated at “arm’s length” and include the
4 recording of a transaction’s cost in accordance with a specified hierarchy of valuation
5 methodologies.¹¹¹

6 120. The results of the on-site reviews that AT&T conducted demonstrates that many
7 transactions do not comply with the “arm’s length” requirement due to the many instances of
8 intermingled management, “employee sharing” and failure to timely post offered services and
9 goods. Regarding cost valuation requirements, the high rates used for services act as a practical
10 barrier for third parties to use such services. Even to the extent that transactions, as disclosed by
11 Qwest, do not clearly violate this “arm’s length” standard, the Commission cannot conclude that
12 no such violation is occurring in light of Qwest’s failure to comply with the posting requirements
13 of Section 272(b)(5) and the FCC’s accounting principles.

14 121. QCC’s web-posted Service Agreement with Qwest, for example, contains Article
15 10 “Notices” which directs that all written notices, demands or other communications are to be
16 made to the other party’s address. Listed for QCC and Qwest are the exact same address, same
17 suite and same organization. As both entities affirmatively state that all transactions will be
18 conducted at arm’s length and the two companies are to operate independently, such a close
19 affinity belies Qwest’s assertions of compliance with this section.

20 **F. Section 272(c)(2) – Accounting Principles**

21 122. Whereas the requirements of Section 272(b) apply to Qwest LD and QCC,
22 Section 272(c)(2) applies to Qwest and can be viewed as a companion to the Section 272(b)(2)

¹¹¹ *BellSouth Louisiana II Order*, ¶ 339.

1 accounting requirements for the Section 272 affiliate. This section requires Qwest to account for
 2 all transactions with Qwest LD and QCC pursuant to accounting principles designated or
 3 approved by the FCC. As was mentioned in the initial on-site review and testing discussion of
 4 this affidavit, AT&T was unable to review the supporting detail for receipts of money from
 5 Qwest to Qwest LD. These affiliate transactions, for 1999 alone, totaled almost \$29 million. In
 6 my follow-up testing, I was presented with detail of these amounts, which I attempted to trace
 7 into corresponding task orders. Payments from Qwest to Qwest LD, and now to QCC, should be
 8 subjected to close scrutiny because of the potential for improper subsidization.¹¹²

9 123. Based upon its initial and follow-up review, the following items deserve scrutiny
 10 in determining Qwest's compliance with this section:

- 11 a. Because Qwest has failed to properly disclose specific, billable
 12 transactions between it and QCC/Qwest LD, a full evaluation of the
 13 compliance of affiliate transactions cannot be accomplished.¹¹³
- 14 b. The only transactions between Qwest and QCC/Qwest LD that are
 15 accounted for as "affiliate transactions" are those involving payments.¹¹⁴
 16 There is a concern that transactions not involving the exchange of money
 17 may occur and not be accounted for and reported.
- 18 c. Qwest focuses on the audit of its ARMIS Report, but admits that the
 19 auditor's compliance statement is "general in nature" and "does not focus
 20 specifically on the relationship between the BOC and the 272 affiliate."¹¹⁵
 21 Also, the audit relates to the ARMIS data, which includes only summary
 22 information about transactions with Section 272 affiliates.¹¹⁶ Thus, the
 23 audit that Qwest discusses is not an audit specifically of the Section 272
 24 affiliate and its specific transactions and is not probative of compliance
 25 with Section 272. The FCC has stated that the accounting requirements of

¹¹² One reason that the FCC applied its existing affiliate transaction rules to transactions between BOCs and Section 272 affiliates was to detect and protect against flows of subsidies. See *Accounting Safeguards Order*, ¶ 176.

¹¹³ *BellSouth Louisiana II Order*, ¶ 340.

¹¹⁴ Qwest Response to AT&T Multistate Data Request No. 17. "The procedures for capturing affiliate transactions include downloading all payments to and payments from affiliates from the company's financial systems."

¹¹⁵ Schwartz Affidavit at 28.

¹¹⁶ *Bell Atlantic New York Order*, ¶ 411, n. 1268. It appears that the FCC reviews the ARMIS data and CAMs to compare the total amount of affiliate transactions. In the footnote to this cite it appears that the FCC relies upon the independent auditor's reviews of ARMIS data. However, Qwest has opted not to have an audit engagement for the year 2000 in 2001. See Schwartz Affidavit, at 14, n. 10.

1 section 272 (c)(2) "pertain to the BOC's 'dealings' with its separate
2 affiliate."¹¹⁷

3 124. Subsequent to my initial and follow-up reviews, I conducted a supplemental on-
4 site review of QCC's transactions. Based upon my supplemental review, AT&T continues to
5 dispute Qwest's and QCC's assertions of compliance with Section 272(c)(2).

6 125. Pursuant to Section 272(c)(2), Qwest is required to account for all transactions
7 with QCC pursuant to accounting principles "designated or approved" by the FCC.¹¹⁸ Despite
8 Qwest's transactions with QCC, its section 272 affiliate, stretching back to July 2000, there was
9 *no accounting booked until April of 2001* and, thus by definition, Qwest has not met the
10 requirements of this section which call for adherence to FCC accounting principles including
11 GAAP. Washington's ALJ noted that "It appears that Qwest did not follow FCC rules or
12 Commission regulations governing affiliate transactions with respect to these services."¹¹⁹

13 126. Qwest relies upon the filings of its 10K report and its Cost Allocation Manual
14 ("CAM") together with the annual audit as evidence that the BOC accounts for transactions in
15 accordance with the accounting principles approved by the FCC.¹²⁰ Once again, "mere paper
16 promises" does not equate to compliance. The FCC has stated that an audit of a BOC's CAM
17 information and ARMIS data will not conclusively prove compliance with Section 272(c)(2).¹²¹
18 Further, as has been noted under the discussion for Section 272(b)(2), this assertion cannot be
19 true where no affiliated transactions between Qwest and QCC were accounted for during a nine-
20 month period commencing in July 2000, until April 2001, and where Qwest's ARMIS data for
21 QCC affiliated transactions is either underreported or not reported at all. As previously

¹¹⁷ *Bell Atlantic New York Order*, ¶ 415.

¹¹⁸ *Id.* See also, 47 C.F.R. Sec. 32.37

¹¹⁹ *WA ALJ's 272 Order*, p. 114.

¹²⁰ Schwartz Affidavit at 14, 29

¹²¹ *BellSouth Louisiana II Order*, ¶ 340.

1 discussed, the FCC has stated that the accounting requirements of section 272(c) pertain to the
2 BOC's "dealings" with the 272 affiliate. The auditor's opinion as to the BOC's 10K report does
3 not specifically address dealings between Qwest and QCC.

4 127. Qwest's assertion that it "has implemented the proper internal controls and
5 processes to satisfy the requirements of Section 272(c)"¹²² is conclusory. If Qwest had proper
6 internal controls, then proper GAAP accounting would have been employed and accounting of
7 billable transactions would have been occurring in a timely manner. Such was not, and has not
8 been, the case. Qwest has not demonstrated compliance with this section.

9 128. Qwest's asserts that "[n]either the FCC's review ... nor the audits conducted by
10 independent auditors have revealed discrepancies with [Qwest's] corporate accounting
11 procedures for affiliate transactions in the past three years."¹²³ As a result of my on-site reviews,
12 I have presented discrepancies with Qwest's accounting for affiliated transactions with Qwest
13 LD and QCC. Such discrepancies are recent and they rebut the presumption of compliance that
14 Qwest asserts.

15 129. As was previously mentioned, Qwest admitted the failure to account for billable
16 transactions in the documentation provided to me. On the summary sheets were notes that stated
17 **[PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED]**

18 Once again, failure to timely bill and reconcile cannot be excused and is a violation of the
19 FCC's accounting principles. The PUC is urged to inquire as to why these practices were not
20 accomplished for 2000 activity and what effect that has on Qwest's FCC (ARMIS) and SEC
21 filings.

¹²² Schwartz Affidavit at 29.

¹²³ *Id.*, at 28.

1 **G. Section 272(c) (1) – Nondiscrimination Safeguards**

2 130. Section 272(c)(1) establishes requirements for the BOC. Under this section, a
3 BOC must provide to unaffiliated entities the same goods, services, facilities, and information
4 that it provides to its Section 272 affiliate at the same rates, terms, and conditions. In other
5 words, Qwest is required to treat unaffiliated entities as it treats QCC.¹²⁴

6 131. A *prima facie* case of unlawful discrimination under this section is established if
7 it can be shown that a BOC has not provided an unaffiliated entity with the same goods, services,
8 facilities, and information that it provides to its Section 272 affiliate at the same rates, terms and
9 conditions.¹²⁵ Neither can the BOC use a third affiliate to provide services to the Section 272
10 affiliate to circumvent the requirements of this section. To do so would create a loophole around
11 the separate affiliate requirement.¹²⁶

12 132. Qwest provided copies of documents between a third affiliate known as
13 U S WEST Advanced Technologies (“AT”) and other Qwest affiliates.¹²⁷ Among the agreement
14 or project reports provided were several between AT and Qwest LD. AT&T believes that
15 several of the services provided by AT for Qwest LD constitute discrimination in the provision
16 of information and the development of new services. Failure to also offer such services and
17 information to an unaffiliated entity constitutes noncompliance with this section.

18 133. Included in these reports were the following projects, with pertinent comments,
19 where the long distance affiliate was the client or the project had implications for Qwest LD:

¹²⁴ *Non-Accounting Safeguards Order*, ¶ 202.

¹²⁵ *Id.*, ¶ 212.

¹²⁶ The FCC has stated that the affiliate transaction rules govern “chain transactions” where an unregulated affiliate stands between the BOC and the Section 272 affiliate in the provision of assets, information, or services. *Accounting Safeguards Order*, ¶¶ 183, 251; *Non-Accounting Safeguards Order*, ¶ 309; *Ameritech Michigan Order*, ¶ 373. Because Qwest and QCC are both subsidiaries of Qwest Services Corporation, the possibility exists that QSC is being used, or will be used, to circumvent the nondiscrimination provisions.

¹²⁷ Response to AT&T Multistate Data Request No. 16, Confidential Attachment C, Books 1 & 2 (the “Montana

1 [PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED]
2

3 Note that this ties in directly with section 272(g) and concerns about the effect of joint
4 marketing on the competitive landscape.

5 134. To the extent that these services are offered to Qwest LD and not to other
6 unaffiliated entities, Qwest is circumventing the non-discrimination safeguards by using AT and
7 violating the provisions of Section 272(c)(1). To illustrate, using examples (a) and (g) above,
8 AT was used to develop cost savings for U S WEST LD (n/k/a Qwest LD) for a service that was
9 uniquely provided by the BOC, U S WEST. This appears to be a circumvention of the
10 prohibition of the BOC transferring local exchange and exchange access facilities and
11 capabilities to an affiliate.¹²⁸

12 135. Similarly, Qwest revealed during the Colorado 272 workshop that product
13 design, planning and development services for Qwest and QCC would be provided by Qwest
14 Services Corp. ("QSC") and therefore, such services were not required to be posted, and made
15 available, to unaffiliated parties.¹²⁹ Again, this shifting of services to QSC, the parent of both
16 Qwest and QCC, appears to be a circumvention of the non-discrimination requirements of this
17 section.

18 136. Examination of a recent invoice from Qwest to QCC for May, 2001 revealed that
19 certain financial services (for "Bismarck Bankruptcy" per the work order) were provided for the
20 time period October 2000 – April 2001. However, the work order was not signed until May 11,
21 2001. The presumption is that it wasn't posted until sometime after the signature. Thus, this

Affiliate Interest Reports filed with the Montana Public Service Commission in 1999 and 2000 for transactions in 1998 and 1999, respectively").

¹²⁸ *Non-Accounting Safeguards Order*, ¶ 309.

1 appears to be a violation of the 10-day posting rule and the provision of services to QCC on a
2 discriminatory basis.

3 137. Examination of numerous invoices by AT&T revealed that there was a lack of
4 timely accounting and billing for services rendered to Qwest LD and QCC. The 272 affiliates
5 have been receiving preferential treatment due to the billing delay and, as such, discriminatory
6 behavior is present.

7 138. A companion to the above is the historical lack of interest being charged on
8 outstanding amounts payable by Qwest LD and QCC. Although Qwest claims to have rectified
9 this situation, I noted at least one invoice from April 2001 where this did not appear to be the
10 case. **[PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED]**

11 139. Discrimination may be occurring in relation to Qwest's bill printing and
12 processing work order.¹³⁰ The work order shows a fully distributed cost to QCC of \$ 0.07/page.
13 Inquiry to AT&T personnel reveals that Qwest is charging AT&T a much higher price. Further
14 investigation is necessary to determine if Qwest is discriminating on the basis of price as well as
15 the nature of the service (Qwest provides mailing as well as printing for QCC).

16 140. The FCC noted a number of items that it reviewed to determine if BellSouth was
17 meeting its nondiscrimination obligation.¹³¹ The items that Qwest has not provided any
18 information on are as follows:

- 19 a. Qwest has not stated whether it will inform QCC of planned network
20 outages before public notice is given pursuant to FCC rules.
- 21 b. Qwest has not stated its commitment to continue participating in public
22 standard-setting bodies.

¹²⁹ A more complete discussion of this matter can be found in the joint marketing section below.

¹³⁰ See <http://www.qwest.com/about/policy/docs/qcc/currentDocs.html>

¹³¹ *BellSouth Louisiana II Order*, ¶¶ 342 - 347.

c. Qwest has not stated that it is committed not to discriminate in favor of Qwest LD in the "establishment of standards relating to interconnection or interoperability of public networks."

d. Qwest has not stated that it would not discriminate in the processing of PIC orders.

e. Qwest has not stated that it would comply with the FCC's prohibition against the use of its Official Services Network to provide interLATA services.

f. The number of Qwest LD's or QCC employees, who are former employees of Qwest, and *vice versa*, creates a concern that there will be an improper flow of confidential information between the two entities.

g. Finally, Qwest has not yet proved that it will provide nondiscriminatory access to its OSS.

141. Finally, as has been previously noted, my supplemental review disclosed that QCC had failed to post its various work and task orders in a timely manner. Thus QCC was provided goods, services, facilities and information on an exclusive basis for many months. Such is a *prima facie* case of unlawful discrimination under this section.

H. Section 272(e) – Fulfillment of Certain Requests

142. This section provides for certain requirements in the provision of exchange service (*i.e.* local service) and exchange access services (*i.e.* switched access services), and specifically mandates imputation for the BOC's own provisioning in subsection 272(e)(3) and mandates nondiscrimination in the provisioning of interLATA or intraLATA facilities or services to its 272 affiliate in subsection 272(e)(4).

143. Qwest states that this section is to ensure "that the BOC treats the 272 Affiliate similarly to other IXCs with respect to special and switched access."¹³² It further states that "the 272 Affiliate will be required to pay for access charges under the same rates, terms and

¹³² Schwartz Affidavit at 31.

1 conditions that any other IXC would be charged” and concludes “[t]herefore, there is no unfair
2 advantage.”¹³³

3 144. Given that Qwest’s intrastate switched access rates for Minnesota are multiples
4 above economic cost (and even its own interstate rates) and contain non-cost based rate elements
5 such as the carrier common line charge, there is indeed an unfair advantage. This is true because
6 the BOC is consolidated with the parent company, QSC, which, in turn, is consolidated with
7 QCI. Also, the 272 Affiliate, QCC, is consolidated. Thus, Qwest is merely paying out access
8 charges from one pocket and transferring to another.¹³⁴

9 The mandate in 272(e)(3) should be of particular concern in light of the recent order
10 issued by the Kansas Corporation Commission. The Kansas Commission has recently opened a
11 docket, on its own motion, to investigate whether the rates and practices of Southwestern Bell
12 Communications (“SBC”) and the 272 affiliate (“SBCS”) in offering long distance services are
13 unjust, unreasonably discriminatory, or unduly preferential.¹³⁵ The PUC should review and use
14 this section *before* Qwest is granted interLATA authority as a safeguard against anti-competitive
15 pricing that will result in price squeezes.

16 145. The Kansas Commission further agreed to investigate allegations that preferential
17 pricing from Southwestern Bell Telephone Company (“SWBT”) was occurring where access
18 revenue was being collected by SWBT and then reinvested in SBCS to allow the latter to price
19 long distance at or below cost.¹³⁶ This method of preferential pricing implicates Section
20 272(e)(4), which requires that services or facilities must be “made available to all carriers at the

¹³³ *Id.* at 32.

¹³⁴ At least two states, Montana and Arizona, have current dockets to examine Qwest’s above cost access rates and the interplay of such with the section 271 application process.

¹³⁵ *Order on Petitions to Intervene, Emergency Motion for Suspension of Specific Rate Tariffs, and Petition for Reconsideration or Modification*, Docket Nos. 01-SBLC-693-TAR, 01-SBLC-323-TAR, and 01-SBLC-594-TAR.

¹³⁶ *Id.* at 17.

1 same rates and on the same terms and conditions, and ... the costs are appropriately allocated.”

2 It is worth repeating that the Section 272 standards for compliance are set out in the FCC’s

3 *Accounting and Non-Accounting Safeguards Orders*, which were designed to “discourage and

4 facilitate the detection of improper cost allocation and cross-subsidization between the BOC and

5 its Section 272 affiliate.”¹³⁷ The FCC recognized the practical impact of improper cost

6 allocation: “an overallocation of costs to the BOC’s local operations means an underallocation of

7 costs to the affiliate’s long-distance operations, which would allow the affiliate to undercut

8 inefficiently its interexchange competitors by providing a long-distance service at a low price

9 that underestimates the true costs of that service.”¹³⁸

10 146. Qwest has already displayed its intent in its filing to obtain pricing flexibility for

11 its intraLATA toll services in the State of Colorado. Qwest applied for the premature

12 elimination of the requirement to impute switched access rates into the price floor for the

13 provision of intraLATA toll services. The Colorado Commission, in rejecting this application,

14 wisely stated:

15 Before we eliminate the current imputation requirement for switched access,

16 Qwest *must demonstrate* that there are comparable (in quality), widely-available,

17 economically-feasible, and price-constraining alternatives to Qwest’s switched

18 access services.¹³⁹

¹³⁷ *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130 (Rel. April 16, 2001), ¶ 226 (“*Verizon 271 Order*”).

¹³⁸ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, Second Order on Reconsideration, FCC 97-222 (Rel. June 24, 1997), ¶ 12.

¹³⁹ *Application of U S WEST Communications, Inc., for the Commission to Open an Investigatory Docket to Eliminate on an Expedited Basis the Requirement that U S WEST Impute Switched Access Rates into the Price Floor of its IntraLATA Long Distance Service*, Decision Denying Exceptions, Adopted January 24, 2001, Colorado Docket No. 00A-201T, Section 5, at 13 (emphasis added).

147. Qwest states that the requirements of Section 272 are “designed to prohibit anti-competitive behavior, discrimination, and cost shifting.”¹⁴⁰ From a review of the Section 272 affiliate website it is apparent that Qwest is, and will be, performing many functions for QCC and correspondingly will have multiple opportunities to engage in cost shifting. The Commission should minimize these opportunities by mandating that QCC include the long-run incremental costs associated with these functions in the price floor and impute tariff rates for access charges and other tariffed services.¹⁴¹

148. Given the current environment where the conventional wisdom is that toll service will soon be bundled, below cost or free, with high-end data service, the PUC also should assure itself, as Colorado did in the switched access imputation case, that Qwest and QCC will adhere to the provisions of Section 272(e) by implementing the suggestions listed in the paragraph below. To not do so may invite a “Kansas scenario” where the Kansas Commission finds itself in an investigation docket a month after the FCC permitted SBCS to provide long distance service.

149. The FCC has provided guidance in several of its past orders as to what evidence it will look at in determining compliance with section 272(e).¹⁴² Based on a review of past FCC orders, Qwest’s affidavit is lacking in the following respects.

- a. Qwest and QCC did not provide specific performance standards for measuring its requirements of Section 272(e)(1).
- b. Qwest has yet to prove nondiscriminatory access to its OSS, and this may result in a finding that Qwest does not comply with Section 272(e)(1).
- c. There presently is no performance measure or measures for access. Qwest should be required to develop such a measure or measures, obtain

¹⁴⁰ *Id.* at 2.

¹⁴¹ For example, a QCC work order for the “Sales of QCC Products and Services”, that includes Qwest’s service in selling QCC’s out-of-region long distance, is estimated to cost QCC over \$3 million/year. It would be expected that such cost would be included into QCC’s price floor so that it is not offering long distance services below cost.

¹⁴² See generally, *BellSouth Louisiana II Order*, *Bell Atlantic New York Order*.

1 approval of the measures, and demonstrate that it is prepared to collect and
2 report this data.

3 d. Given the recent developments in Kansas and the Commission's ruling in
4 Colorado, a concrete statement should be made by Qwest that imputation
5 will be implemented for all services, which includes interLATA and
6 intraLATA long distance services, in order to fully comply with the non-
7 discrimination requirements.¹⁴³

8 e. Qwest has made no affirmative assurance that it will maintain records
9 tracking the quality of service to QCC for telephone exchange and
10 exchange access services,¹⁴⁴ nor whether such will be posted to its
11 website.

12 **I. Section 272 (g) -- Joint Marketing**

13 **1. Overview**

14 150. Qwest and QCC, in their affidavits, provide broad and vague and often untrue
15 assertions as to QCC's compliance with Section 272(g) and rely heavily on the *BellSouth South*
16 *Carolina Order*. Qwest states that "... it is critical to recognize that once the BOC obtains
17 Section 271 approval, the BOC and the 272 Affiliate may jointly market services without regard
18 to the nondiscrimination provisions of Section 272(c)."¹⁴⁵ But, that is not true as certain
19 activities remain subject to the nondiscrimination provisions. Such a broad statement is typical
20 of Qwest's blithe approach to its compliance with this section.

21 151. Although Section 272(g)(3) provides that certain activities permitted under
22 subsection (g) are not be considered to violate the nondiscrimination provisions of Section
23 272(c), the FCC clarified this subsection in its *Non-Accounting Safeguards Order*:

24 Some of the activities identified by the parties appear to fall clearly within
25 the scope of Section 272(g)(3) and hence would be excluded from the
26 Section 272(c) nondiscrimination requirements. For example, activities

¹⁴³ BellSouth stated that if its Section 272 affiliate used exchange access for the provision of its own service, BST (the BOC) would impute to itself the same amount it would charge an unaffiliated interexchange carrier. *BellSouth Louisiana II Order*, ¶ 354.

¹⁴⁴ *Verizon 271 Order*, ¶ 230, n 746.

¹⁴⁵ Schwartz Affidavit at 32.

1 such as customer inquiries, sales functions, and ordering, appear to
2 involve only the marketing and sale of a Section 272 affiliate's services, as
3 permitted by Section 272(g). *Other activities identified by the parties,*
4 *however, appear to be beyond the scope of Section 272(g), because they*
5 *may involve BOC participation in the planning, design, and development*
6 *of a Section 272 affiliate's offerings. In our view, such activities are not*
7 *covered by the Section 272(g) exception to the BOC's nondiscrimination*
8 *obligations.*¹⁴⁶

9 152. This begs the question of what activities are subject to the nondiscrimination
10 requirements. The FCC stated that "[w]e see no point to attempt at this time to compile an
11 exhaustive list of the specific BOC activities that would be covered by section 272(g). We
12 recognize that *such determinations are fact specific and will need to be made on a case-by-case*
13 *basis.*"¹⁴⁷

14 153. Qwest's affidavit specifically discussing section 272(g) fails to provide adequate
15 evidence of a program of compliance with this section.¹⁴⁸ Qwest's "Section 272 Employee
16 Training" does contain a brief mention of section 272(g) provisions which states that section
17 272(g) "Provides one clear exception to Section 272(c) nondiscrimination requirements – Once
18 Section 271 authority is secured, QC may jointly market in-region, interLATA long distance
19 services with QCC."¹⁴⁹ Thus, even the brief mention in the employee training is couched in
20 terms of what Qwest can do free of the nondiscrimination safeguards. It does not advise
21 employees that certain joint activities such as product design, planning and/or development
22 services are still subject to the nondiscrimination safeguards contain in section 272(c).

23 154. Qwest's affidavit fails to state QCC's intention to market information services
24 and whether Qwest will also permit other information service providers to market and sell
25 telephone exchange services. Rather, Qwest relies on a hypothetical "if" scenario that does not

¹⁴⁶ See *Non-Accounting Safeguards Order*, ¶ 296 (emphasis added).

¹⁴⁷ *Id.* (emphasis added)

¹⁴⁸ *Bell Atlantic New York Order*, ¶ 419.

1 rise to the requisite intent.¹⁵⁰ Such failure means that Qwest has not demonstrated that it will
 2 comply with section 272(g)(1).¹⁵¹

3 155. A recent Order in the instant docket granted a motion to compel discovery that
 4 includes marketing scripts and plans.¹⁵² The PUC should carefully review and, if necessary
 5 require modifications to, Qwest's joint marketing scripts and related marketing activities with
 6 QCC. Given the effect that other BOCs' entry into interLATA services has had on the
 7 competitive landscape in New York and Texas,¹⁵³ close scrutiny is warranted to mitigate Qwest's
 8 ability to leverage its status as the dominant local exchange provider. Qwest should not be
 9 allowed to use the cloak of secrecy, especially regarding marketing scripts, to shield the impact
 10 of its joint marketing on the competitive landscape in Minnesota.

11 156. Section 272 (g)(2) prohibits Qwest from marketing interLATA services provided
 12 by QCC until authorized to do so under section 271(d). Qwest has been violating this section
 13 and its assertion that it "does not currently market ... in-region, interLATA services" is untrue.¹⁵⁴
 14 As was discussed in a recent filing by the Minnesota Attorney General (on behalf of the
 15 Minnesota Department of Commerce) in July 2001, Qwest began marketing QCC's interLATA
 16 services by running an ad in the *Minneapolis Star-Tribune*.¹⁵⁵ We are in agreement with the

¹⁴⁹ Schwartz Affidavit, Exhibit MES-272.16, p. 12.

¹⁵⁰ *Id.* at 32.

¹⁵¹ *BellSouth Louisiana II Order*, ¶ 356.

¹⁵² *In the Matter of a Commission Investigation Into Qwest's Compliance with Section 272 of the Telecommunications Act of 1996's Separate Affiliate Requirements*, Docket No. P-421/CI-01-1372, Minnesota Public Utilities Commission, November 20, 2001, *Fourth Prehearing Order and Order Compelling Discovery*. ("272 Discovery Order").

¹⁵³ On its web-based "Public Policy" page, Qwest boasts: "The response to Verizon's and SBC's entry into the long-distance market is astounding. In six months, more than one million customers in New York have signed up with Verizon's long-distance service. SBC is signing up customers just as fast in Texas." Such statements and statistics underscore the incredible advantage the local monopoly BOC has once Section 271 approval is granted and concretely demonstrates the regional remonopolization of telephone services by the BOCs.

¹⁵⁴ Schwartz Affidavit at 32.

¹⁵⁵ *In the Matter of a Commission Investigation Into Qwest's Compliance with Section 272 of the Telecommunications Act of 1996's Separate Affiliate Requirements*, Docket No. P-421/CI-01-1372, Minnesota Public Utilities Commission, November 15, 2001, *Supplemental Memorandum of Law in Support of its Motion to*

1 Attorney General's conclusion that Qwest has commenced the joint marketing of QCC's
2 interLATA long-distance, and such is a violation of section 272 (g)(2). The PUC should demand
3 of Qwest whatever is necessary to restore the competitive landscape and mitigate the
4 discriminatory advantage gained by QCC over its competitors.

5 157. As discussed above, QCC revealed for the first time in Colorado Section 272
6 workshops that marketing-related services such as product design, planning and development
7 services for QC and QCC would be provided by Qwest Services Corporation ("QSC") and that
8 such services are not required to be posted and made available to unaffiliated parties.¹⁵⁶ In
9 previous written testimony, Qwest and QCC gave the impression that joint design, planning and
10 development services would be posted and made available and certainly never mentioned that
11 QSC would provide such services.

12 158. QSC is not just another services affiliate; it is the direct parent or owner of both
13 QC and QCC. By shifting services to Qwest Services Corp., QC and QCC can now participate
14 in joint planning, design and development free of the strictures of the section 272-
15 nondiscrimination safeguards. This "shell game" is emblematic of QC's approach to section 272
16 to circumvent where possible and accomplish the bare minimum to pass the form test. The PUC
17 should carefully weigh these and other Qwest machinations when tendering its recommendation
18 to the FCC.

19 159. To balance the BOC's joint marketing of its section 272 affiliate's services, the
20 FCC stated¹⁵⁷ that the BOC must also fulfill the equal access requirements of Section 251(g)
21 described in the *Non-Accounting Safeguards Order*.¹⁵⁸ Qwest must inform callers that they have

Compel Discovery, at pp. 5 – 6.

¹⁵⁶ Colorado TR 92, 84, 89 – 90.

¹⁵⁷ *BellSouth South Carolina Order*, ¶ 239.

¹⁵⁸ *Non-Accounting Safeguards Order*, ¶ 292.

1 a choice of long distance carriers and offer to read, in random order, the names and, if requested,
2 the telephone numbers of all available interexchange carriers. Qwest has not made this
3 affirmative statement in its affidavit. The PUC should require that Qwest do so.

5 VI. PAST HISTORY AND FUTURE COMPLIANCE

6 160. "Those who do not remember the past are condemned to repeat it." This quote is
7 especially apt in the context of Section 272(g). The FCC has stated, "[p]ast and present behavior
8 of the BOC applicant provides the best indicator of whether [the applicant] will carry out the
9 requested authorization in compliance with Section 272."¹⁵⁹

10 161. In developing a record and determining what weight to give to the evidence
11 presented in Qwest's Section 271 application, the PUC and the FCC should look through the
12 prism of Qwest's (and the former U S WEST's) rich history of violations pertaining to Section
13 271. Such history should be part of the calculus in determining whether the evidence provided
14 by Qwest, QCC and Qwest LD is sufficient to demonstrate that they will comply with the
15 requirements of Section 272.

16 162. In September 1999, the FCC found that the former U S WEST's "provision of
17 nonlocal directory assistance service to its in-region subscribers constitutes the provision of in-
18 region, interLATA service as defined in Section 271(a) of the Act."¹⁶⁰ U S WEST had petitioned
19 for forbearance from the requirements of Section 272 to provide nonlocal directory assistance
20 service. In essence, U S WEST was attempting to carve out an exception for itself as to the
21 requirements of Section 272.

¹⁵⁹ Bell Atlantic New York Order, ¶ 402.

¹⁶⁰ See *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*; *Petition of U S WEST Communications, Inc. for Forbearance*, CC Docket No. 97-172,

1 163. The FCC wrote: "... the record indicates that U S WEST refuses to provide
2 unaffiliated entities with access to all of the telephone numbers that it uses to provide nonlocal
3 directory assistance service..." and "[t]he record further reveals that U S WEST does not provide
4 unaffiliated entities with access to the in-region telephone numbers it uses to provide nonlocal
5 directory assistance at the same rates, terms and conditions it imputes for itself."¹⁶¹ The FCC
6 recognized that U S WEST had a competitive advantage in the provisioning of directory
7 assistance service by virtue of the fact that it had a "...more complete, accurate, and reliable
8 database than its competitors."¹⁶²

9 164. In its order, the FCC concurred with AT&T's position that "Section 272 seeks to
10 prevent BOCs from, among other things, leveraging their monopoly over local exchange services
11 into interLATA markets."¹⁶³ The FCC recognized that Section 272 was a bulwark to prevent a
12 BOC such as U S WEST (and now Qwest) from unfairly using its dominant position and
13 monopoly power to gain an unfair competitive advantage not only in an incidental service like
14 directory assistance, but especially with regard to in-region, interLATA service.¹⁶⁴ The FCC
15 ordered U S WEST to "make available to unaffiliated entities all of the in-region directory listing
16 information it uses to provide region-wide directory assistance service at the same rates, terms,
17 and conditions it imputes to itself. Thus, to the extent U S WEST charges unaffiliated entities
18 for the in-region directory information it uses to provide nonlocal directory assistance on an
19 integrated basis, it must impute to itself the same charges."¹⁶⁵

Memorandum Opinion and Order, FCC 99-133 (Rel. Sept. 27, 1999), ¶¶ 2, 63.

¹⁶¹ *Id.*, ¶ 34.

¹⁶² *Id.*, ¶ 35.

¹⁶³ *Id.*, ¶ 52, n. 111.

¹⁶⁴ *Id.*, ¶ 54.

¹⁶⁵ *Id.*, ¶ 37 (footnotes omitted).

1 165. Furthermore, the FCC concluded that "U S WEST's provision of nonlocal
2 directory assistance service to its in-region subscribers constitutes the provision of in-region,
3 interLATA service."¹⁶⁶

4 166. On or about May, 1998, Qwest entered into two separate business agreements
5 with Ameritech and with U S WEST to provide Qwest's long distance service under their own
6 brand names before these two BOCs had gained Section 271 authorization to provide in-region
7 long distance service. On September 28, 1998, the FCC issued its Memorandum Opinion and
8 Order, which found that Qwest, the former U S WEST Communications, Inc., and Ameritech
9 Corp. had violated Section 271 by entering into the agreement and providing Qwest's long
10 distance service.¹⁶⁷ The FCC wrote: "It is clear on this record that Ameritech's and U S WEST's
11 business arrangements with Qwest pose the competitive concerns that Section 271 seeks to
12 address, and we accordingly find them unlawful under the Act."¹⁶⁸

13 167. The illegal marketing alliance entered into by Qwest and U S WEST was an
14 attempt to flout the plain requirements of Section 271 of the Act. Qwest and U S WEST's
15 argument before the FCC basically was that their clearly calculated attempt to circumvent
16 Section 271 should be excused because the marketing alliances would serve the public interest.
17 The FCC noted that in its internal strategy sessions, U S WEST recognized the benefits of
18 offering a combined package of services and began considering how to offer in-region
19 interLATA service prior to Section 271 approval and quoted one of U S WEST's admitted goals
20 to "[p]reposition customers for U S WEST Long Distance by providing the convenience of one-

¹⁶⁶ *Id.*, ¶ 63.

¹⁶⁷ See *AT&T v. Ameritech Corporation et al.*, File Nos. E-98-41, E-98-42 and E-98-43, Memorandum and Opinion and Order, FCC 98-242 (Rel. Oct. 7, 1998), ¶¶ 38, 64.

¹⁶⁸ *Id.*, ¶ 52.

1 stop shopping.”¹⁶⁹ Upon completion of the negotiations with Qwest to provide its interLATA
2 services, U S WEST commenced an aggressive marketing campaign in six of its states that
3 included marketing through inbound telemarketing.¹⁷⁰

4 168. The FCC found that the record indicated that U S WEST was actively
5 recommending Qwest’s long distance service over other IXC’s service (“U S WEST’s marketing
6 materials instruct its representatives to encourage its customers to select Qwest over all other
7 long distance carriers.”).¹⁷¹

8 169. Violations of Section 271 are not limited to pre-merger U S WEST
9 Communications, Inc. On February 16, 2001, the FCC released its Opinion and Order that
10 concluded that Qwest was providing in-region, interLATA service in violation of Section 271.¹⁷²
11 Through its 1-800-4USWEST calling card service, the FCC found the following: (1) U S WEST
12 was permitted to accumulate “a significant base of customers”; (2) it was enabled to “amass
13 goodwill as a full-service provider with its local service customers”; (3) it held itself out as
14 providing long distance service through promotional materials; and (4) it controlled “numerous
15 functions, including marketing and customer care, that are typically performed by a reseller of
16 long distance service.”¹⁷³

17 170. Because of its initial conclusion and findings, the FCC passed on consideration of
18 other claims, including discrimination in providing transport services and circumvention of
19 Section 272 safeguards.

¹⁶⁹ *Id.*, ¶¶ 14, 41.

¹⁷⁰ *Id.*, ¶ 16.

¹⁷¹ *Id.*, ¶ 60.

¹⁷² *AT&T Corp. v. U S WEST Communications, Inc.*, File No. E-99-28, Memorandum Opinion and Order, DA01-418 (Rel. Feb. 16, 2001).

¹⁷³ *Id.*, ¶ 30.

1 171. Among the evidence that was presented to the FCC was U S WEST's marketing
2 tactics of using bill inserts and other mailings aimed at its local subscriber base and exercising
3 exclusive control over the marketing of the service.¹⁷⁴

4 172. On April 16, 2001, Arthur Andersen, LLP released its post-merger Report on
5 Qwest Communications International, Inc.'s Statement of Management Assertions dated
6 April 16, 2001. The Statement was required by the FCC order approving the merger of
7 U S WEST, Inc. and Qwest Communications International, Inc. Attachment I to the Report of
8 Independent Public Accountants states that the auditors "noted that the account records of 458
9 customers included prohibited in-region InterLATA service component codes." Of these,
10 "certain non-metered services (*e.g.*, private line services) for 266 customers were billed and
11 branded as Qwest services."

12 173. The audit report raises questions whether Qwest's parent was unlawfully
13 providing Section 271 long distance services *after* the merger. In a subsequent letter Arthur
14 Andersen has adjusted the number of incorrectly billed customers from 266 to 255.¹⁷⁵ Also,
15 despite the merger between U S WEST and QCI occurring almost eleven (11) months ago, the
16 independent auditor is unable to proffer an opinion as to Qwest's management assertions. On
17 page one of the letter, Arthur Andersen states that it has "not yet completed our work and
18 accordingly, we are unable to express, and we do not express, any opinion on management's
19 assertions [regarding their compliance with the Final Divestiture Plan] as of any date or for any
20 period subsequent to April 16, 2001."¹⁷⁶

¹⁷⁴ *Id.*, ¶ 3.

¹⁷⁵ Letter from Arthur Andersen LLP to Dorothy Atwood (June 6, 2001) and filed with the FCC's Common Carrier Bureau (discussing audit of Qwest's required divestiture of its in-region interLATA services and pursuant to CC Docket No. 99-272).

¹⁷⁶ *Id.*

174. If past behavior of Qwest is to be one of the indicators of its compliance with Section 272, I would offer that the PUC and the FCC should approach Qwest's offers of compliance with the utmost skepticism. The past zeal of these two entities to enter into the provision of in-region, interLATA long-distance prior to Section 271 approval is the best indication of how future marketing under Section 272(g) will be conducted. The past conduct also provides a scenario of how future compliance will play out and the damage that will be incurred to the competitive market.

VII. CONCLUSION

175. The difficulty of preventing a BOC monopoly from using its power in the local exchange market to distort competition in the long distance market is not a reason for laxity in the enforcement of these provisions. Rather, Section 272, vigorously enforced, can act as a tripwire, alerting regulators and competitors to the presence of unseen and difficult to detect abuses, which can then be investigated. In the context of the present application, the Section 272 requirements serve that function well. The failure of Qwest, Qwest LD and now QCC to satisfy the obligations of disclosure provides ample warning that Qwest plans to give, even at this early stage, cursory attention to these obligations.

176. Qwest has failed to meet its burden of establishing that it and its Section 272 affiliates have and will comply with the requirements of Section 272. Based on its failure to show compliance with Section 272, Qwest's request for an affirmative recommendation from the Minnesota PUC to the FCC for in-region interLATA relief should be denied.